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Autonomy and the Thirteen Colonies: Was the American Revolution Really Necessary?*

Robert A. Friedlander**

Nothing better illustrates the almost insurmountable difficulties faced by modern pluralistic societies in dealing with recalcitrant minorities on the transnational level than the futile attempts to grant autonomy to dissident populations.¹ It has been particularly frustrating for democratic regimes when minority rejectionists have turned to terror-violence as their ultimate political weapon, with Ireland, Spain, and Israel the preeminent contemporary examples. The Northern Irish Parliament is indefinitely suspended,² home rule has failed to end Basque extremism,³ and the Camp David accords face an uncertain future.⁴ In each case, autonomy has been the chosen method of conflict-resolution and despite offers of—or attempts at—self-government, conflict continues.

Throughout modern history in both theory and practice, autonomy has been at best inherently suspect. In those few historical instances when it was actually attempted, autonomy either worked very badly or not at all. There is even reason to believe that autonomy as a legal norm really does not exist. For example, statehood in contemporary international law requires a permanent population, a defined territory,

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1. Iran is presently experiencing severe internal disruptions with respect to dissident minorities, particularly the Kurds. See Harris, *Ethnic Conflict and the Kurds*, 433 ANNALS 112, 113-15, 122-24 (1977); Hempstone, *Khomeini's "Feast of Blood,"* NEW REPUBLIC, Sept. 22, 1979, at 18-21; NEWSWEEK, Sept. 10, 1979, at 36; U.S. NEWS & WORLD REPORT, Jan. 14, 1980, at 27-28. The acrimonious Canadian debate over Quebec separatism continues with Premier René Levesque's proposed referendum being an admixture of autonomy and sovereign independence. See, e.g., The Gazette (Montreal), Dec. 21, 1979, at 1, 8-11.

2. See R. HULL, THE IRISH TRIANGLE, CONFLICT IN NORTHERN IRELAND 109-11, 116-17 (1976); Bishop, *Law in the Control of Terrorism and Insurrection: The British Laboratory Experience*, 42 L. & CONTEMP. PROB. 140 (1978).

3. See, e.g., N.Y. Times, Oct. 15, 1979, § A at 11, col. 5; Wash. Post, Oct. 16, 1979, § A at 11, col. 1; The Blade (Toledo), Oct. 28, 1979, § A at 3, col. 3; Jerusalem Post, Jan. 30, 1980, at 4, col. 4; Jerusalem Post, Feb. 4, 1980, at 5, col. 1.

4. Cf. Ball, *The Coming Crisis in Israeli-American Relations*, 58 FOREIGN AFF. 231, 242-56 (1979-80); Heller, *Begin's False Autonomy*, 37 FOREIGN POL. 111 (1979-80). Both articles are sharply critical of Israeli policy, but the former goes ultra vires when it seeks to legitimate PLO terrorism.

an organized government, and a capacity to enter into relations with other states.⁵ Autonomous regimes by definition lack the final element in that formula, and thus they fail to meet the minimal standard for recognition of independent governance.

Autonomy relationships during the twentieth century were mainly designed as placebos to frustrate independence movements and to offset secessionist pressures. Whether created for colonial dependents by controlling Mother Countries and mandatory powers, for victor combatants over vanquished enemies partially dismembered via peace settlements, or for majority regimes confronted by an unassimilable minority, autonomy has always been a stopgap measure. In almost every instance, grants of autonomy were reluctantly given and ungratefully received. The most recent example of an internal autonomous remedy devised by a national governing authority for its dissident regional minority is that of newly democratic Spain. Yet, despite the Basque Autonomy Statute, Basque terrorism has not abated, and violence continues to beget violence.

Those who seek to obtain a juridical definition of autonomy from international law treatise books will quest in vain.⁶ Although self-determination has been elevated by many to the status of an international human "right," or at the very least a normative principle,⁷ autonomy has been often neglected and on occasion totally disregarded by legal scholars and commentators.⁸ Viewed from the perspective of

5. This is based upon Article 1 of the 1933 Montevideo Convention on the Rights and Duties of States, now generally accepted as the norm for state practice vis-a-vis recognition. See J. STARKE, *INTRODUCTION TO INTERNATIONAL LAW* 107-09 (8th ed. 1977) [hereinafter cited as STARKE]; Crawford, *The Criteria for Statehood in International Law*, 48 BRIT. Y.B. INT'L L. 93, 111-39 (1976-77). The latter study draws a distinction between "formal independence" and "actual independence." *Id.* at 123-25.

6. See, e.g., M. AKEHURST, *A MODERN INTRODUCTION TO INTERNATIONAL LAW* (3d rev. ed. 1977); J. BRIERLY, *THE LAW OF NATIONS: AN INTRODUCTION TO THE INTERNATIONAL LAW OF PEACE* (6th ed. H. Waldock 1963); I. BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* (2d ed. 1973); W. FRIEDMANN, *THE CHANGING STRUCTURE OF INTERNATIONAL LAW* (1964); D. GREIG, *INTERNATIONAL LAW* (2d ed. 1976); W. LEVI, *CONTEMPORARY INTERNATIONAL LAW: A CONCISE INTRODUCTION* (1979); D.P. O'CONNELL, *INTERNATIONAL LAW* (1970) (2 vols.); C. RHYNE, *INTERNATIONAL LAW: THE SUBSTANCE, PROCESSES, PROCEDURES AND INSTITUTIONS FOR WORLD PEACE WITH JUSTICE* (1971); G. SCHWARZENBERGER & E. BROWN, *A MANUAL OF INTERNATIONAL LAW* (6th ed. 1976); STARKE, note 5 *supra*; S. WILLIAMS & A. DE MESTRAL, *AN INTRODUCTION TO INTERNATIONAL LAW: CHIEFLY AS INTERPRETED AND APPLIED IN CANADA* (1979).

7. See generally SELF-DETERMINATION: NATIONAL, REGIONAL, AND GLOBAL DIMENSIONS (Y. Alexander & R. Friedlander eds. 1980).

8. J. CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 211-14 (1979) (refers to autonomy as a stage "in the progress toward self-government," and pointedly notes that autonomous regions are not considered to be states) [hereinafter cited as CRAWFORD]; 3 G. SCHWARZENBERGER, *INTERNATIONAL LAW AS APPLIED BY INTERNATIONAL*

international law, autonomy is therefore an artificial concept of dubious legal consequence. Admittedly, it still is invoked by politicians, historians, and political analysts, though its twentieth-century historical role has only been that of a political instrumentality.

Autonomy may be roughly defined as self-regulation (sometimes mistakenly called home rule) subject to a superior sovereignty. Historical practice has always placed the conduct of foreign relations under control of the lawful sovereign. This was as true of Canada in the late nineteenth century as it is of the present day Transkei.⁹ But even when such a political remedy had been accepted by all parties in interest, their *parens patriae* relationship eventually dissolved into either separation or severance. The choice inevitably became outright independence on the one hand or a loose associative arrangement like the British Commonwealth on the other.¹⁰ No event more accurately predicted these tensions and traumas than the revolt of the thirteen American Colonies from Great Britain.

The American Revolution, along with its French counterpart, combined to create a great historical watershed, and the impact of both has been felt throughout the past two centuries. With regard to autonomy, the American colonial experience first established a pattern of separation later aspired to by other subject peoples.¹¹ Yet, the colonial era was unique in its inception, for many of the American Colonies were self-regulated by their founders only to lose their customary rights as trade and commerce prospered along with the passing of the older generation.

From their very origin the American Colonies were founded by religious and political dissenters.¹² These individuals considered

COURTS AND TRIBUNALS: INTERNATIONAL CONSTITUTIONAL LAW 507-15 (1976) (discusses autonomy solely in the context of the United Nations legal system).

9. See J. BREBNER, CANADA: A MODERN HISTORY 283-91, 296, 413-15 (1970); CRAWFORD, *supra* note 8, at 222-27.

10. Canada was granted membership in the League of Nations nearly a dozen years before the Statute of Westminster (1931), which created the British Commonwealth. See R. VEATCH, CANADA AND THE LEAGUE OF NATIONS 3-11 (1975).

11. The impact of the American Declaration upon independence declarations of new twentieth-century nation states is obvious. See generally INDEPENDENCE DOCUMENTS OF THE WORLD (A. Blaustein, J. Sigler & B. Beede eds. 1977).

12. De Tocqueville shrewdly observed: "It is not the happy and the powerful who go into exile, and poverty with misfortune is the best-known guarantee of equality among men." 1 A. DE TOCQUEVILLE, DEMOCRACY IN AMERICA 33 (Trans. by G. Lawrence, J. Mayer ed. 1969). See also 1 D. BOORSTIN, THE AMERICANS: THE COLONIAL EXPERIENCE 5-9 (1958) [hereinafter cited as BOORSTIN]; E. MORGAN, THE PURITAN DILEMMA: THE STORY OF JOHN WINTHROP 34-53 (1958) [hereinafter cited as MORGAN]; Allemand, *Two European Influences on the American Revolution: Puritanism and John Locke*, 25 DE PAUL L. REV. 805, 807-17 (1976).

themselves to be outside the law and were viewed as such by the British governing establishment (the socio-political composition of which changed several times throughout the seventeenth and eighteenth centuries). This is not to say that economic considerations were secondary in the founding of American colonial settlements, but rather that the mercantile motivation of the Mother Countries, England particularly, became inextricably intertwined with religion and politics.¹³ England encouraged such emigration. France did not. Holland lacked sufficient population to people an empire. This simple demographic statement explains in large part the British triumph in the acquisition of North America.

Jamestown, the first English colony, was established under the auspices of a mercantile joint stock venture chartered as the Virginia Company. Originally founded in December, 1606, the Company was reorganized with a new royal charter three years later, but failed to live up to expectations and was dissolved in 1624. Virginia thus became by default the first crown colony.¹⁴ Of special significance was the creation by corporation officers in London of a colonial General Assembly in 1619, reaffirmed two years later in a formal constitution.¹⁵ Why it happened is still somewhat inexplicable,¹⁶ but the nature of that happening is something of major importance. The language of the Virginia Colony's constitution indicates that the colonists were to be part of the governing process:

And this General Assembly shall have free power to treat, consult, and conclude, as well of all emergent Occasions concerning the Publick Weal of the said Colony and every Part thereof, as also to make, ordain, and enact such general Laws and Orders, for the Behoof of the said Colony, and the good Government thereof, as shall, from time to time, appear necessary or requisite; . . .¹⁷

The Virginia Assembly, though not immediately recognized by the Crown after the imposition of royal control, was to continue, largely

13. The Mercantile impulse is explored in depth in M. KAMMEN, *EMPIRE AND INTEREST: THE AMERICAN COLONIES AND THE POLITICS OF MERCANTILISM* 1-44 (1970) [hereinafter cited as KAMMEN]. For shorter statements see D. LACY, *THE MEANING OF THE AMERICAN REVOLUTION 16-24* (1966) [hereinafter cited as LACY]; 1 S. MORISON, *THE OXFORD HISTORY OF THE AMERICAN PEOPLE: PREHISTORY TO 1789*, at 75-100 (1972) [hereinafter cited as MORISON].

14. See MORISON, *supra* note 13, at 86-93.

15. 7 *THE FEDERAL AND STATE CONSTITUTIONS, COLONIAL CHARTERS AND OTHER ORGANIC LAWS OF THE STATES, TERRITORIES, AND COLONIES NOW OR HERETOFORE FORMING THE UNITED STATES OF AMERICA* 3810-12 (F. Thorpe ed. 1909) [hereinafter cited as *COLONIAL CHARTERS*].

16. C. DEGLER, *OUT OF OUR PAST: THE FORCES THAT SHAPED MODERN AMERICA* 21 (rev. ed. 1970) [hereinafter cited as DEGLER].

17. *COLONIAL CHARTERS*, *supra* note 15, at 3811-12.

through efforts of the colonists themselves. Finally, in 1637 the King instructed the Governor to summon an Assembly, and in 1639 those instructions granted that body a permanent status.¹⁸ One cannot deny the long-term effect of allowing a colonial legislature to exist contemporaneously with Parliament when the latter was supposed in law and in fact to represent all English citizens. Crown and Parliament were at that time caught up in a constitutional power struggle, and colonial questions did not rate a high priority. But self-regulation then, as now, first implanted the seeds of self-rule.

The famed Mayflower Compact, signed at Cape Cod during November 1620, in the words of one distinguished American historian "is an almost startling revelation of the capacity of Englishmen in that era for self-government."¹⁹ Not to be outdone, the Cambridge signatories of the Massachusetts Bay Colony Charter in August 1629 agreed to transfer their government and its patent to the shores of New England.²⁰ "In this way the governor of the company could become himself the governor of the colony, and the general court of the company could become the legislative assembly of the colony."²¹ Here, too, the terms of the Charter authorized enactment of wholesome and reasonable statutes, ordinances, and decrees which would conform to the laws of England.²² Though these documents and their successors did not seem revolutionary to their contemporaries, they had the effect of creating a dual legal system. This colonial constitutionalism²³ was to be an important factor in the shaping of American political thought.

Viewed through the reflective lens of historical perspective, the Virginia and Massachusetts experiments laid the foundation for a dual constitutional authority in almost every jurisdiction. The next and, perhaps, most significant document in the development of American self-regulation was the Fundamental Orders of Connecticut adopted in 1639. Distinguishing between its earlier mercantile and religiously oriented predecessors, some scholars have looked upon it as the first popularly based American fundamental law.²⁴ It was soon followed by

18. DEGLER, *supra* note 16, at 21.

19. MORISON, *supra* note 13, at 94. See H. COMMAGER, *THE EMPIRE OF REASON: HOW EUROPE IMAGINED AND AMERICA REALIZED THE ENLIGHTENMENT* 194 (1978) (calls that document "[s]urely the first authenticated instance of government by compact") [hereinafter cited as COMMAGER].

20. MORGAN, *supra* note 12, at 45-48; MORISON, *supra* note 13, at 106.

21. MORGAN, *supra* note 12, at 46.

22. COLONIAL CHARTERS, *supra* note 15, at 1846-60.

23. The term is that of BOORSTIN, *supra* note 12, at 20.

24. See, e.g., B. BAILYN, *THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION* 190-91 (1967) [hereinafter cited as BAILYN]. *Contra*, J. POMFRET, *FOUNDING THE AMERICAN*

the Massachusetts "Body of Liberties" which was revised in 1647 and finally published the following year.²⁵ Numerous colonial constitutions and statutory compilations were to rely upon these earlier examples and precedents, so that "[a]ll through the colonial era Americans went from compact to compact."²⁶

As the seventeenth century wore on, it became increasingly difficult to distinguish between self-regulation and self-government.²⁷ Concern with law and the establishment of legal relationships emerged as a prime American characteristic within the first half-century of colonization. Inevitably, "public freedom consisted in having a share in public business."²⁸ This required a corpus of law and a profession of lawyers. From its earliest beginnings, colonial governance had become institutionalized,²⁹ and individual rights were deemed to be part of the governing process. Although based and modeled upon English law, legal codes and administrative statutes invariably took on a distinctive American coloration. The American colonists believed in their fundamental rights as Englishmen, but they also asserted those rights in an American context. In the long run, "the just rights and privileges of every freeman" became something other than what the English Parliament had in mind.³⁰

One result was the creation of a professional American bar, meaning not only paid attorneys, but, ultimately, the rise of an indigenous judiciary. Technical English legal terminology was applied with increasing frequency by a decided colonial accent. Most significant was the slow but steady divergence between English theory and American practice.³¹ "The New World abounded with legal problems for which English precedents either did not exist, or were not available . . ."³² For its part, the English Crown never explicitly provided for the in-

COLONIES: 1583-1660, at 246 (1970) (maintains that "Connecticut copied its system from Massachusetts with only one or two important differences") [hereinafter cited as POMFRET].

25. BAILYN, *supra* note 24, at 194; BOORSTIN, *supra* note 12, at 23-24; POMFRET, *supra* note 24, at 180.

26. COMMAGER, *supra* note 19, at 194.

27. See MORISON, *supra* note 13, at 111 ("During these two decades 1640-1660, England's American colonies were left very much to themselves"); POMFRET, *supra* note 24, at 335 ("All in all, self-government made remarkable progress during the period before 1660").

28. H. ARENDT, ON REVOLUTION 115 (1963) [hereinafter cited as ARENDT].

29. COMMAGER, *supra* note 19, at 198.

30. BAILYN, *supra* note 24, at 193-98.

31. See *id.* at 197; BOORSTIN, *supra* note 12, at 26-28, 202-05.

32. BOORSTIN, *supra* note 12, at 203. For a discussion of the continuing transformation of English Common Law in the post-Revolutionary century, see Friedlander, *Social Utility, Justice Holmes, and the American Transformation of the English Common Law*, 26 CHITTY'S L.J. 279 (1978).

troductio[n] of the common law to any of the Colonies, since that would have implied a reduction of the sovereign prerogative. The Royal Government merely established the general principle that colonial legislation should not be at odds with the laws of England. Growing disharmony between the two in the next century would bring about both legal confusion and political conflict.³³ Not without reason were twenty-five of the fifty-six signatories to the Declaration of Independence members of the bar.³⁴

Despite the Cromwellian interregnum, which, if anything, led to greater self-regulation on the part of the Colonies, particularly in Virginia, the English Metropolitan Government continued to extend its sovereign authority but not necessarily its political control. Virginia, which had first opposed Cromwellian rule, on March, 12, 1651, was conceded extraordinary rights and privileges with respect to trade and commerce by Cromwell's Council of State:

That the people of Virginia [shall] have free trade as the people of England do enjoy to all places and with all nations according to the lawes of that commonwealth, and that Virginia shall enjoy all priviledges equall with any English plantations in America.

That Virginia shall be free from all taxes, customs and impositions whatsoever, and none to be imposed on them without consent of the Grand assembly, and soe that neither fforts nor castle bee erected or gar-risons maintained without their consent.³⁵

The agreement, however, was never published, and according to Jefferson, every concession made by England was "violated by subsequent kings and parliaments."³⁶ Small wonder, then, that Virginia more than a century later would become a seedbed of sedition and oppositionist sentiment.

Until the Glorious Revolution of 1688 and the establishment of Parliamentary supremacy during the next century, Britain's relationship to the American Colonies in view of the colonial assemblies was less that of a Mother Country and her dependencies and more like a government that was *primus inter pares*.³⁷ Charles II, during the Restoration, followed a program of benign neglect. In fact, "[t]he king

33. 1 THE LAW PRACTICE OF ALEXANDER HAMILTON: DOCUMENTS AND COMMENTARY 10-11 (J. Goebbel, Jr. ed. 1964).

34. BOORSTIN, *supra* note 12, at 205. But see J. HURST, THE GROWTH OF AMERICAN LAW: THE LAW MAKERS 251 (1950) (notes the all too familiar disparity between the colonial admiration for the profession of law on the one hand, and the evident popular distrust of lawyers themselves on the other).

35. Quoted in T. JEFFERSON, NOTES ON THE STATE OF VIRGINIA 108 (T. Abernathy ed. 1964).

36. *Id.* at 110.

37. C. ANDREWS, THE COLONIAL BACKGROUND OF THE AMERICAN REVOLUTION 40-41 (rev. ed. 1972) [hereinafter cited as ANDREWS].

can hardly be said to have had a colonial policy."³⁸ But with the advent of William and Mary, England slowly began to embark upon a new economic and imperial course, when at the same time colonial commercial interests, particularly the New England merchants, had come to regard their interests as separate from their London counterparts. The very fact of empire would prove to be an increasing strain, for British mercantilism, like the Continental versions, was predicated upon a dominant Mother Country and subservient colonies.

Winston Churchill the historian is as prone to hyperbole as was Churchill the politician. His portrayal of a dramatic switch in English policy after the Stuart Restoration leading to "unceasing conflict with the colonial assemblies, who resented the threat to royalise and unify colonial administration," is somewhat overstated, although the abortive attempt by James II to extend royal power over New York and New England proved indeed to be a harbinger of the future.³⁹ Subsequent to the accession of William and Mary following the Bloodless Revolution of 1688, Parliamentary mercantilism replaced royal mercantilism, and imperial doctrines were pursued with far greater vigor than they had been in the past.

Trade and commerce are the sinews of the state. They often serve as ties that bind, and sometimes those ties tend to constrict. British mercantilist theory emphasized monopoly, exploitation of natural resources, a favorable balance of trade, a strong merchant marine, and the attainment of national self-sufficiency by the colonizing power. With respect to Britain's American colonies, this would be accomplished by means of the Navigation Acts, which required transportation of raw materials and finished goods to take place on British ships.⁴⁰ "Mercantilist policy can be summed up as a patchwork of restrictive laws conceived in a spirit of arrogance and administered with an inefficiency that invited evasion."⁴¹ Because of that inefficien-

38. KAMMEN, *supra* note 13, at 37-38.

39. 3 W. CHURCHILL, *A HISTORY OF THE ENGLISH-SPEAKING PEOPLES: THE AGE OF REVOLUTION 139-40* (1957) [hereinafter cited as CHURCHILL].

40. For the theory and practice of British mercantilism, see *id.* at 140-43; KAMMEN, *supra* note 13, at 40-44; MORISON, *supra* note 13, at 188-91; 1 P. SMITH, *A PEOPLE'S HISTORY OF THE AMERICAN REVOLUTION: A NEW AGE NOW BEGINS 133-41* (1976) [hereinafter cited as SMITH]. As to the five basic elements comprising the British scheme, see 4 C. ANDREWS, *THE COLONIAL PERIOD OF AMERICAN HISTORY 13-21* (1938). For a detailed description of the more rigorous legislation after 1600, and its practical effect, see *id.* at 55-84.

41. SMITH, *supra* note 40, at 140. *Contra*, CHURCHILL, *supra* note 39, at 143 ("The system was more irksome on paper than in practice"); Bailyn, *1776: A Year of Challenge*, 19 J.L. & ECON. 437, 465 (1976) (noting that the mercantilist system was "so complex it could scarcely be understood, so irrational, it contradicted itself, so unenforceable it invited wholesale evasion").

cy, the main harm to American commerce in the seventeenth century was psychological rather than economic.

Majoritarian historical interpretation treats the year 1763, which marked the conclusion of the Seven Years' War and its American concomitant, the French and Indian War, as a significant turning-point for British-American relations.⁴² The Molasses Act, enacted a generation earlier in 1733, actually had little effect besides reminding the Colonies of their inferior imperial position, and it had been evaded by the colonists with successful impunity.⁴³ But the new King, George III, along with the Ministry of George Grenville and its successors, determined that the Americans should be made to pay their share of the costs of empire. Whether this decision was made on the basis of apportioning the burdens of war,⁴⁴ or with the intention of forcing the colonists to pay for the cost of maintaining an empire, particularly a military presence in the New World,⁴⁵ the net result was a growing divergence between Britain's governing classes and their colonial dependencies.⁴⁶ The Sugar Act, Quebec Act, Plantation Act, and Stamp Act appear to some analysts and commentators as basically the source of taxation disputes and quarrels over the costs of imperial policies.⁴⁷ Even so,

[f]rom the perspective of the administration of the colonies, it could be argued the British government performed so badly, and with such entire disregard of the principles of proper administration, that the wonder was not that the colonies finally revolted but that they endured such blunders and inequities as long as they did.⁴⁸

Actually, the stamp tax and its progeny were symptoms of a far more serious disagreement, involving the nature of the constitutional relationship between Great Britain and her Colonies.⁴⁹ The Colonial

42. See, e.g., ANDREWS, *supra* note 37, at 122-41; I. CHRISTIE & B. LABAREE, *EMPIRE OR INDEPENDENCE, 1760-1776*, at 25-45 (1977) [hereinafter cited as CHRISTIE & LABAREE]; L. GIPSON, *THE COMING OF THE REVOLUTION, 1763-1775*, at 1-9 (1962) [hereinafter cited as GIPSON]; KAMMEN, *supra* note 13, at 95-111; J. MILLER, *ORIGINS OF THE AMERICAN REVOLUTION 170-78* (1943) [hereinafter cited as MILLER]; MORISON, *supra* note 13, at 234-48.

43. ANDREWS, *supra* note 37, at 92, 130-31.

44. GIPSON, *supra* note 42, at 56; MORISON, *supra* note 13, at 247.

45. CHRISTIE & LABAREE, *supra* note 42, at 30-32; CHURCHILL, *supra* note 39, at 170-71; SMITH, *supra* note 40, at 166-70.

46. KAMMEN, *supra* note 13, at 119 (mentions "the incompatibility of British administrative intentions with colonial commercial habits and aims").

47. See ANDREWS, *supra* note 37, at 129-42; B. BAILYN, *THE ORIGINS OF AMERICAN POLITICS* 159-60 (1968); CHRISTIE & LABAREE, *supra* note 42, at 105-30, 254; GIPSON, *supra* note 42, at 55-100; MORISON, *supra* note 13, at 244-45. See also CHURCHILL, *supra* note 39, at 176 (maintains that "by the middle of 1770 reconciliation seemed complete").

48. SMITH, *supra* note 40, at 141.

49. Jensen, *Historians and the Nature of the American Revolution*, in *THE REINTERPRETATION OF EARLY AMERICAN HISTORY: ESSAYS IN HONOR OF JOHN EDWIN POMFRET* 107 (R.

Assemblies rightly or wrongly believed their rights and their powers to be under attack by the London Imperial Government. This led inexorably to the argument that Britain's attempts at taxation were unconstitutional, since only the Colonies had the legal authority to tax themselves.⁵⁰ Rejecting both the theory of virtual representation and the possibility of actual representation,⁵¹ the American colonists looked upon themselves as the defenders of traditional constitutional rights and considered the Crown and Parliament to be the violators of legal legitimacy.⁵² One respected scholar has written that popular conviction in the Colonies held "America was destined to become the center of a 'Great Empire.'"⁵³ A better view is that the colonial legislatures had been whittling away at sovereign control for a century and a half, and when presented with the opportunity, they "could not resist the temptation to finish the job."⁵⁴

In the final analysis the growing cleavage between the disputants was fundamentally political, though their rhetoric centered on legal argumentation. The process of historical evolution between two increasingly disparate peoples led almost directly to a revolutionary mentality when fundamental interests continued to diverge. Despite the Colonies' emphasis upon the rule of law, and despite their demands for the preservation of historic liberties, the traditional rights which they so boldly proclaimed actually translated into political freedom to shape their own destiny. The autonomous child was now fully grown and in the act of breaking away from parental control.⁵⁵

Thus, the coming of the American Revolution was due in large measure to the violation of what the American colonists perceived to

Billington ed. 1966) [hereinafter cited as Jensen]; Peterson, *Adams and Jefferson: A Revolutionary Dialogue*, 1 WILSON Q. 108, 115 (1976) [hereinafter cited as Peterson].

50. DEGLER, *supra* note 16, at 76-77; E. MORGAN, *THE BIRTH OF THE REPUBLIC*, 1763-89, at 24-27 (1956) [hereinafter cited as *THE BIRTH OF THE REPUBLIC*]; MORISON, *supra* note 13, at 234-35. The Virginia Burgesses believed that "the Stamp Act and its successors threatened the power of the Assembly itself." A. OLSON, *ANGLO-AMERICAN POLITICS, 1660-1775: THE RELATIONSHIP BETWEEN PARTIES IN ENGLAND AND COLONIAL AMERICA* 166 (1973). For a detailed study of the impact of the Stamp Act debate upon colonial instruments of governance, see Reid, *In the First Line of Defense: The Colonial Charters, the Stamp Act Debate, and the Coming of the American Revolution*, 51 N.Y.U. L. REV. 177 (1976).

51. *THE BIRTH OF THE REPUBLIC*, *supra* note 50, at 25-26.

52. W. LIPPMAN, *THE PUBLIC PHILOSOPHY* 57-58 (1956). For the observations of a member of the Continental Congress, see V. RAMSAY, *HISTORY OF THE AMERICAN REVOLUTION* 8-9 (1789) [hereinafter cited as RAMSAY].

53. MILLER, *supra* note 42, at 434. If true, this would be the earliest expression of Manifest Destiny.

54. *THE BIRTH OF THE REPUBLIC*, *supra* note 50, at 92.

55. See G. BEER, *BRITISH COLONIAL POLICY, 1754-1765*, at 314-15 (1907); DEGLER, *supra* note 16, at 80-82; MORISON, *supra* note 13, at 235 & 248.

be their basic rights as Englishmen. Imperial legislation appeared to be infringements upon the constitutional liberties guaranteed every British citizen.⁵⁶ In the words of Professor Bailyn, the American Revolution "was above all else an ideological-constitutional struggle."⁵⁷ It was also, in the eyes of some analysts, a conservative movement.⁵⁸ Had not de Crevecoeur, in his *Letters From an American Farmer* (1782), asserted that the American Revolution was a conspiracy of "great personages" directed against the common man?⁵⁹ Writing on the eve of America's Bicentennial anniversary, a prominent political scientist recalled the nation's conservative beginnings. The Declaration of Independence, he argues, actually anticipated the Constitutional Convention of 1787. According to this thesis, the Declaration was not "a radical manifesto calling for wide scale or fundamental social change," but rather reflected the "central elements of American thought."⁶⁰

American denial of Parliamentary supremacy lay at the heart of the rebellion. Yet it is possible that modern-day hindsight may have given to the events of 1770-1775 an historical certainty which was not perceived by the participants themselves. Samuel Eliot Morison goes so far as to claim that "[t]here was no American nationalism or separatist feeling in the colonies prior to 1775."⁶¹ Jefferson's major biographer insists that he and John Adams, as late as 1775, were still seeking reconciliation and not revolution. The two had based their hopes on being able to return to British constitutional principles, as they understood them, and even continued their efforts for several months after the fighting finally broke out. At first, both men merely "supported armed resistance as a means of bringing Britain to her senses and winning a settlement on American terms."⁶² A contrary in-

56. See C. BECKER, *THE DECLARATION OF INDEPENDENCE: A STUDY IN THE HISTORY OF POLITICAL IDEAS* 80-134 (1958) [hereinafter cited as BECKER]; E. BURNETT, *THE CONTINENTAL CONGRESS* 53 (1941); Reid, *In an Inherited Way: English Constitutional Rights, the Stamp Act Debates, and the Coming of the American Revolution*, 49 S. CAL. L. REV. 1109, 1111-17 (1976) [hereinafter cited as Reid]. Reid also insists that the shifting American arguments merely represented good lawyering. *Id.* at 1110-11.

57. 1 PAMPHLETS OF THE AMERICAN REVOLUTION viii (B. Bailyn ed. 1965).

58. See generally J. JAMESON, *THE AMERICAN REVOLUTION CONSIDERED AS A SOCIAL MOVEMENT* (1926); C. ROSSITER, *SEEDTIME OF THE REPUBLIC* (1953); A. SCHLESINGER, *THE COLONIAL MERCHANTS AND THE AMERICAN REVOLUTION* (1918).

59. Quoted in ARENDT, *supra* note 28, at 17. See Jensen, *supra* note 49, at 108 (commenting on "the fundamental importance of a few men in the revolutionary movement").

60. Carey, *The Meaning of the Declaration*, Wall St. J., July 2, 1976, at 6, col. 3. See BECKER, *supra* note 56, at 23 (treats the bill as a "true bill" of indictment against the British government); Reid, *supra* note 56, at 1126-27 (implies a similar viewpoint).

61. MORISON, *supra* note 13, at 245. *Contra*, Mason, *America's Political Heritage: Revolution and Free Government—A Bicentennial Tribute*, 91 POLITICAL SCI. Q. 193, 196 (1976).

62. Peterson, *supra* note 49, at 115-16.

terpretation is provided by a more critical American historian who asserts that by the time of Lexington and Concord in April 1775, local and state Committees of Correspondence "had so far taken over all the functions of government that not only had the legitimacy of British rule disappeared, but also many of the formal institutions."⁶³

Historical truth, if it exists, is often obscured by present-day relativism. How else does one explain the absurd arguments that colonial patriots were twentieth-century terrorists in eighteenth-century garb? The claim "that the use of purposeful terror for political ends was an integral feature of the American Revolution"⁶⁴ is not only feckless but fraudulent. Because terror-violence has unhappily been utilized in the present era by so-called liberation groups seeking to invoke the principle of self-determination, and thereby making this claim a license to kill, it is tempting to justify illegally proscribed means through analogies to past experience. The assertion that American Patriots in 1776 resorted to revolutionary terror against Loyalists and British alike not only distorts past events but deprives them of any significant meaning.⁶⁵ This misguided historicism does, however, illustrate the difficulties attendant to the political disintegration of an autonomous structure.

It may very well be that the Revolutionary spark was finally ignited not by heroic deeds but by the words of Thomas Paine. His best-selling pamphlet, *Common Sense*, stirred the Colonial imagination as no other work had done. Although containing a vigorous constitutional defense of the American position,⁶⁶ it was in effect a call to arms: "the weeping voice of nature cries, 'Tis time to part.'" ⁶⁷ A number of influential historians are in agreement that Paine's contribution to the Revolutionary spirit in 1776 was substantial and perhaps conclusive.⁶⁸ Paine also was in part responsible for the historical portrait of George III as tyrant and as premier villain of the independence struggle. The stan-

63. Marina, *The American Revolution and the Minority Myth*, 20 MOD. AGE 298, 301 (1976).

64. Tierney, *Terror at Home: The American Revolution and Irregular Warfare*, 12 STAN. J. INT'L LEGAL STUD. 1, 2 (1977).

65. See *id.* at 6-7. See also Quainton, *U.S. Prepares for Terrorism*, 42 THE SHINGLE 8, 9 (1979). Mr. Quainton is Director of the United States State Department Office for Combatting Terrorism.

66. T. PAINE, COMMON SENSE AND OTHER POLITICAL WRITINGS 4-10 (N. Adkins ed. 1953).

67. *Id.* at 23.

68. E.g., Greene, *Paine, America, and the "Modernization of Political Consciousness"*, 93 POLITICAL SCI. Q. 73, 74-77 (1978). See THE BIRTH OF THE REPUBLIC, *supra* note 50, at 72-74 (posits that Paine had in effect abandoned legal and constitutional arguments in favor of "natural rights"). See also RAMSAY, *supra* note 52, at 336-37 (notes that the pamphlets "produced surprising effects").

dard judgment, however, is that George III accurately symbolized the average Englishman: "narrow, insular, and contemptuous of 'colonists.'"⁶⁹ When autonomy had ceased to function, the Crown could not, and did not, abandon its sovereign authority. Under these circumstances, conflict became inevitable.

Even the most conservative, imperial-minded of American historians admits that the radical colonial leadership, by 1775, was demanding "a larger measure of local autonomy than the government of the mother country was prepared to grant."⁷⁰ While there is good reason to think that this is what the colonists thought they believed in the two years before the outbreak of hostilities, the King and Cabinet had in fact already rejected the American proposal for a constitutionally based autonomous relationship. Writing in November, 1774, George III resolutely declared: "We must either master them, or totally leave them to themselves and treat them as Aliens."⁷¹ Thus, the parting of the ways was rooted in political irreconcilability nourished in the soil of self-governance. "It would have been impossible in 1770 to devise any formula for British-American relations to which both Parliament and the colonists could agree."⁷²

There is a school of historians which believes that during the last half of the eighteenth century, western civilization had entered into an age of democratic revolution, and that this was an Atlantic rather than a mere American or European phenomenon.⁷³ Likewise there are analysts and commentators who deny that the Declaration of Independence stood for principles of self-determination in any sense beyond the American case against the government of George III.⁷⁴ What is significant, however, for the meaning of autonomy and the historical models of the past, is that for all its promise, and for all the achievements under what must be termed, in the light of modern experience, benign British rule, the great American experiment ultimately failed. Britain learned its lessons well, and its English-speaking possessions thereafter remained in one form or another associated with the British Crown. When twilight finally came to the British Empire, autonomy, where it did exist, gave way again—more gracefully than in the past—to national independence.

69. MILLER, *supra* note 42, at 468-69.

70. GIPSON, *supra* note 42, at 217.

71. Quoted in CHRISTIE & LABAREE, *supra* note 42, at 281.

72. LACY, *supra* note 13, at 113. *Contra*, CHURCHILL, *supra* note 39, at 176.

73. See 1 R. PALMER, *THE AGE OF DEMOCRATIC REVOLUTION: A POLITICAL HISTORY OF EUROPE AND AMERICA, 1760-1800—THE CHALLENGE* 5-23 (1959).

74. Mansfield, *The Right of Revolution*, 105 *DAEDALUS* 151, 152-54, 161 (1976). *But see* Friedlander, *Self-Determination: A Legal-Political Inquiry*, [1975] *DET. CIV. LIB. REV.* 71, 74-75.

Traditional international law emphasizes sovereignty and territoriality, and governmental power provides a firm linkage between them.⁷⁵ Autonomy in law, politics, and history has only been useful in a transitional sense. It has not and cannot represent a permanent resolution to the tenuous relationship between self-regulation and self-rule. That is the continuing reality of the American Revolution for twentieth-century dissident peoples and nationalist regimes.

75. See generally G. SCHWARZENBERGER, *POWER POLITICS: A STUDY OF WORLD SOCIETY* (3d ed. 1964); Lacouture, *Cambodia the Hostage*, *NEW REPUBLIC*, Jan. 5 & 12, 1980, at 13 (illustrates the continuing confusion over the nature of autonomy when he refers to a "merely formal autonomy like that with which Czechoslovakia must content itself").